

# EXHIBIT C

**BIRCH TELECOM OF TEXAS, Ltd., L.L.P.  
AT&T COMMUNICATIONS OF TEXAS, L.P.  
TCG DALLAS  
TELEPORT COMMUNICATIONS OF HOUSTON, INC.**

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**COMPLAINT OF BIRCH TELECOM OF TEXAS Ltd., L.L.P.,  
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TELEPORT COMMUNICATIONS OF HOUSTON, INC.  
AGAINST SOUTHWESTERN BELL TELEPHONE, LP REGARDING  
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TO THE HONORABLE PUBLIC UTILITY COMMISSION:

Birch Telecom of Texas Ltd., L.L.P. ("Birch") and AT&T Communications of Texas, L.P., TCG Dallas, and Teleport Communications of Houston, Inc. ("AT&T") ("AT&T") (collectively "Complainants") file this Complaint against Southwestern Bell Telephone, LP d/b/a SBC-Texas ("SBC-T") for retroactively and on a going-forward basis overcharging Birch for power under SBC-T's Physical Collocation Tariff. Birch and AT&T file this Complaint pursuant to P.U.C. Proc. R. § 22.326, and request relief to order SBC-T to charge power rates consistent with the definition of the rate element of DC Power Consumption on a per amp basis found in Section 20.5 of its Physical Collocation Tariff<sup>1</sup> for power ordered.

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<sup>1</sup> SBC-T Local Access Service Tariff, § 5 (eff. Oct. 28, 2001) ("Physical Collocation Tariff").

## **I. Overview**

The dispute arose initially from the true-up between the Texas collocation interim power rates<sup>2</sup> and permanent power rates<sup>3</sup>; the dispute continues on an ongoing basis for power charges, as well. The dispute is: under Sections 20.5 and 21.5 of SBC-T's Physical Collocation Tariff as approved in Docket No. 21333, does SBC-T have the right to unilaterally charge for redundant power, retroactively and on a going forward basis, ***in addition*** to the power ordered for the collocation arrangement?<sup>4</sup> The answer is "no" for two reasons. *First*, and foremost, the DC Power Consumption rate element and the power per amp rates approved by the Public Utility Commission of Texas ("Commission") in Docket No. 21333 already include redundant power costs as part of the calculation of such rates. SBC-T is not entitled to charge Complainants for both the power arrangement and redundant power. Thus, SBC-T is overcharging tariffed power rates, and is in violation of PURA, § 53.004(a).<sup>5</sup> *Second*, from an operational perspective, the manner in which the power is delivered to Complainants' equipment underscores that SBC-T should not be allowed to charge for redundant power. SBC-T disagrees.

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<sup>2</sup> The interim collocation (physical and virtual) rates were established in Project No. 16251, *Investigation of Southwestern Bell Telephone Company's Entry Into the Texas InterLATA Telecommunications Market*, Order No. 52 at 3 (Sept. 8, 1999). The true-up dispute is ripe for Birch, as will be explained below. To date, SBC-T has not provided AT&T with a true-up for Texas collocation rates, however, SBC-T is now overcharging AT&T on a current basis for power.

<sup>3</sup> The permanent collocation rates were approved in Docket No. 21333, *Proceeding to Establish Permanent Rates for Southwestern Bell Telephone Company's Revised Physical and Virtual Collocation Tariffs*, Order Approving Revised Arbitration Award (June 4, 2001) and Notice of Compliance Filing and Setting of Effective Date (Feb. 19, 2002).

<sup>4</sup> A proposed Decision Point List is attached herein as Attachment 1.

<sup>5</sup> Tex. Utilities Code Ann. § 11.001, *et seq.* (Vernon 1998 & Supp. 2002) ("PURA").

Birch and SBC-T, and AT&T and SBC-T, individually and collectively, attempted to resolve the dispute, which included SBC-T seeking assistance from the Commission through an informal settlement conference on this very issue with both Complainants.<sup>6</sup> Even after the informal settlement conference, the parties remain at an impasse. Consequently, Birch and AT&T seek Commission assistance to resolve the dispute to prohibit SBC-T from unilaterally and unlawfully charging Complainants in excess of the tariffed power nonrecurring and recurring rates in the Physical Collocation Tariff.

## **II. The Parties and Commission Jurisdiction**

Birch Telecom of Texas Ltd., L.L.P. currently provides telecommunications services to customers in Texas pursuant to its Service Provider Certificate of Authority (“SPCOA”) No. 50023 issued on December 14, 1998. Birch’s representative is the undersigned counsel.

AT&T Communications of Texas, L.P. is a certificated telecommunications provider certified to do business in this State pursuant to Certificate of Operating Authority (“COA”) No. 50003, most recently amended and approved in Docket No. 21619. TCG Dallas is a certificated telecommunications provider certified to do business in this State pursuant to COA No. 50020, most recently amended and approved in Docket No. 19630. Teleport Communications of Houston, Inc. is a certificated telecommunications provider certified to do business in this State pursuant to COA No. 50021, most recently amended and approved in Docket No. 19631. AT&T’s, TCG’s and Teleport’s representative is the undersigned counsel.

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<sup>6</sup> *Southwestern Bell Telephone, L.P. Requests for Informal Settlement Conference Pursuant to P.U.C. Proc. R. 22.325*, Docket Nos. 26858 and 26859 (filed Oct. 25, 2002).

Southwestern Bell Telephone, LP d/b/a SBC-Texas is an incumbent local exchange company operating in Texas. By copy of this petition, Birch is serving SBC-T's General Counsel – Ann E. Meuleman.

The Commission has jurisdiction over this request pursuant to Subchapter Q of the Commission's Procedural Rules. Birch adopted the Texas 271 Agreement ("T2A") on January 7, 2000. AT&T has a T2A-based Interconnection Agreement with SBC-T. As authorized in the T2A<sup>7</sup>, Complainants obtained collocation in SBC-T Eligible Structures in Texas pursuant to the terms, conditions, and rates in SBC-T's Physical Collocation Tariff.<sup>8</sup>

### **III. Background and Chronology**

As a result of the Revised Arbitration Award in Docket No. 21333<sup>9</sup>, the Commission established permanent rates for SBC-T physical and virtual collocation. Prior to that event, Complainants paid SBC-T for its collocation arrangements in Texas based on the interim rates for collocation established by the Commission in SBC-T's § 271 proceeding.<sup>10</sup> In the same § 271 proceeding, the Commission authorized a true-up procedure once the permanent rates were established.<sup>11</sup>

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<sup>7</sup> See Texas 271 Agreement, Appendix Collocation - TX, Section 1.0.

<sup>8</sup> SBC-T's Local Access Service Tariff, Section 5 (eff. Sept. 28, 2001) ("SBC-T's Physical Collocation Tariff"). Appendix Collocation of the T2A requires SBC-T to provide cageless collocation (and other forms of collocation) under the terms, conditions, and rates set forth in SBC-T's Physical Collocation Tariff. See T2A, Appendix Collocation, § 1.0.

<sup>9</sup> *Proceeding to Establish Permanent Rates for Southwestern Bell Telephone Company's Revised Physical and Virtual Collocation Tariffs*, Docket No. 21333, Revised Arbitration Award (April 12, 2001).

<sup>10</sup> See, *Investigation of Southwestern Bell Telephone Company's Entry Into the Texas InterLATA Telecommunications Market*, Project No. 16251, Order No. 52 at 3 (Sept. 8, 1999) ("SBC-T's § 271 Proceeding").

<sup>11</sup> The Commission authorized the true-up of interim rates, when it established Docket No. 21333. Specifically, in Project No. 16251, Order No. 52, the Commission approved revised SBC-T Physical and Virtual Collocation Tariffs with interim rates, subject to true-up in Docket No. 21333 which would set permanent rates. *Id.*

## **A. Birch-Specific Facts**

With permanent physical collocation rates in place effective October 28, 2001, Birch awaited a SBC-T true-up proposal between the interim and permanent rates. Birch assumed that SBC-T would present Birch with a true-up for all nonrecurring and recurring rates from the effective date of the interim rates through the effective date of the permanent rates. Birch waited and waited for SBC-T to provide its true-up. Then, on October 25, 2002, twelve (12) months after the effective date of the permanent collocation rates, SBC-T rebilled Birch for all of the collocation recurring charges, which included power recurring charges.<sup>12</sup> In the SBC-T true-up bill, SBC-T billed Birch for recurring power charges that basically doubled Birch's power charges based on SBC-T's decision to charge Birch for redundant DC power, in addition to the power requested for each arrangement.<sup>13</sup> Birch timely and properly disputed this amount as being an improper calculation of the true-up for DC Power Consumption rates during the true-up period. Upon further investigation, Birch determined that SBC-T is also charging Birch late payment charges on the disputed amounts despite SBC-T's and Birch's agreement that Birch did not have to pay the disputed amounts until the issue was resolved. At no time did SBC-T notify or even discuss with Birch that SBC-T would impose late payment charges to any disputed amounts.

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<sup>12</sup> Birch anticipated that rather than receive a bill from SBC-T with true-up charges, SBC-T would have provided true-up calculations in the form of a proposal to allow Birch to determine the methodology used by SBC-T, as well as allow the parties to discuss any disagreements with the proposed true-up calculations. Instead, SBC-T simply sent a bill, which then required Birch to spend an inordinate amount of resources simply to ascertain what was included in the true-up bill. To date, even though requested, Birch still has not received a spreadsheet showing how SBC-T reached the true-up amounts for both nonrecurring and recurring rates for the collocation arrangements. It appears that SBC-T retroactively trued up all of Birch's collocation arrangements to the beginning of each individual order date, which preceded even the § 271 proceeding.

<sup>13</sup> Birch basically uses the same equipment and footprint for all of its collocation arrangements in Texas. Birch requested 40 amps of power for each arrangement.

Then on September 17, 2002, eleven months after the effective date of the permanent collocation rates, SBC-T issued its regular monthly invoice to Birch, which included charges for Birch's current collocation arrangements. Upon investigation of the invoice, Birch determined that, without prior notice, explanation, or discussion, SBC-T began to charge Birch for DC Power Consumption based on the power requested for the arrangement *and for redundant power* for the same arrangement. Birch disputed the collocation power charges on the basis that SBC-T was not authorized under the Physical Collocation Tariff to charge for redundant power. For the September 2002 invoice, the amount in dispute for the power related overcharges was \$32,892.56. Since that time, SBC-T has unlawfully continued to charge Birch power rates in excess of the tariffed rates on an average of \$80,000 per month. As of the filing of this complaint, the total amount in dispute for Birch is \$2,302,797.37 in disputed recurring power charges and \$9,819.69 in late payment charges.

SBC-T and Birch have discussed the dispute and issue contained in this Complaint in a number of settings, both formal and informal. However, the parties have not been able to reach agreement. Commission intervention of the dispute is the only means that Birch can see to resolve the impasse.<sup>14</sup>

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<sup>14</sup> Complainants are very mindful of the limited Commission resources and time, particularly at this point in time. However, given the amount in controversy continues to rise, without any movement from SBC-T, Birch and AT&T determined that they had to file this Complaint. This decision was reinforced by SBC-T's recent Motion for Clarification filed in Docket No. 21333. From Complainants' perspective, SBC-T's Motion is late and actually is a post-interconnection dispute arising from the true-ups and ongoing disputes on power charges. Complainants will handle the SBC-T Motion appropriately in Docket No. 21333. However, Complainants determined that it would be more efficient to get the dispute before the Commission properly as a post-interconnection dispute. Birch and AT&T appreciate the ability to seek Commission assistance, and will work with the Commission Staff for an efficient method of resolving this Complaint.



## **B. AT&T-Specific Facts**

On January 25, 2003, fifteen (15) months after the effective date of the permanent collocation rates, SBC-T issued its regular monthly invoice to AT&T, which included charges for AT&T's current collocation arrangements. Upon investigation of the invoice, AT&T determined that SBC-T began to charge AT&T for DC Power Consumption for certain of its collocation arrangements based on the power requested for the arrangement *and for redundant power* for the same arrangements. AT&T disputed the collocation power charges on the basis that SBC-T was not authorized under the Physical Collocation Tariff to charge for redundant power. For the January 2003 invoice, the amount in dispute for the power related overcharges was \$3,122.40. As of the filing of this Complaint, the total amount in dispute for AT&T is \$9,592.77 in disputed recurring power charges.

AT&T and SBC-T have discussed the dispute and issue contained in this Complaint in a number of settings, both formal and informal. However, the parties have not been able to reach agreement. Commission intervention of the dispute is the only means that AT&T can see to resolve the impasse.

## **IV. The Dispute**

The most significant recurring component for Complainants' collocation arrangements in Texas is the cost of power. In order to provide power for its equipment located within the collocation arrangement,<sup>15</sup> Complainants purchase power from SBC-T under the terms of the SBC-T Physical Collocation Tariff. Under Section 20.5, the DC

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<sup>15</sup> Birch uses cageless collocation within SBC-T's central offices and basically uses the same footprint (in terms of design and engineering of the collocation arrangement and the type of equipment used in each collocation arrangement in SBC-T's central offices). AT&T uses a variety of equipment in its caged and cageless collocation arrangements in Texas.

Consumption rate is defined as: “[t]he DC Power charge consists of use of the DC power plant system, with AC input and AC backup. The DC Power charge is on a per amp basis. Rates and charges are as found in Section 21.5.”<sup>16</sup> Section 21.5 of SBC-T’s Physical Collocation Tariff contains DC Power Consumption rates for caged, cageless, caged common, and adjacent on-site collocation arrangements.<sup>17</sup> The monthly recurring rates for DC Power Consumption include two rate components – DC Plant, on a per amp basis, and AC Usage, on a per amp basis. The application of the DC Plant is at issue in this dispute.

The dispute is very straightforward. SBC-T unilaterally and without Commission approval has changed its interpretation of Sections 20.5 and 21.5 of the Physical Collocation Tariff to magically enable it to basically double the power costs associated with each collocation arrangement.<sup>18</sup> As a result, SBC-T is in direct violation of § 53.004(a) of PURA, which provides, “[a] public utility may not directly or indirectly charge, demand, or receive from a person a greater or lesser compensation for a service provided or to be provided by the utility than the compensation prescribed by the applicable tariff . . .” SBC-T claims that there is nothing in the Tariff preventing it from charging for redundant power, in addition to the power provided to the collocation arrangement, but has never been able to: (1) point to any Tariff provision that

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<sup>16</sup> SBC-T’s Physical Collocation Tariff, § 20.5 at Sheet 38.1. A copy of § 20.5 of SBC-T’s Physical Collocation Tariff is attached as Attachment 2.

<sup>17</sup> SBC-T’s Physical Collocation Tariff, § 21.5 at Sheet 45. A copy of § 21.5 of SBC-T’s Physical Collocation Tariff is attached as Attachment 3.

<sup>18</sup> Complainants submit that SBC-T not only unilaterally changed its interpretation of the Physical Collocation Tariff, but it also unilaterally changed its Collocation Application and its Collocation Handbook in July, 2002. Yet, under § 10.2 of SBC-T’s Physical Collocation Tariff, SBC-T is only allowed to revise its Handbook “**by joint agreement of SBC-T and all affected Collocators.**” SBC-T Physical Collocation Tariff, § 10.2 at Sheet 27.1 (emphasis added). Complainants are not aware of any SBC-T notification or joint agreement that enabled SBC-T to make changes to its Collocation Handbook. To the

affirmatively authorizes SBC-T to charge for both the power arrangement and redundant power; (2) justify a change in interpretation of the Tariff, which has not been modified, effective July 1, 2002; or (3) point to any aspect of the decisions reached in Docket No. 21333, in which permanent rates were established, to support its new interpretation of what it is entitled to charge for power.<sup>19</sup> SBC-T has had numerous opportunities to do so, including in its informal settlement conference before the Commission. In each instance, SBC-T failed to justify its position.

Complainants submit that the correct and only interpretation of SBC-T's Physical Collocation Tariff and the Revised Arbitration Award in Docket No. 21333 is that: (1) for the true-up and for going forward collocation rates effective as of October 28, 2001<sup>20</sup>, the Power Consumption rates in Section 21.5 apply to the power ordered for the collocation arrangement only; and (2) the costs for redundant power were included in the per amp rate established by the Commission. As a result, SBC-T cannot charge for both power ordered and redundant power for each collocation arrangement.

A simple example shows the financial implications of SBC-T's latest and newest attempt to overcharge under the Physical Collocation Tariff. For example, if a Collocator orders 20 amps from SBC-T as part of its collocation arrangement (effectively, the Collocator obtains two 20 amps A and B feeds). In that situation, for the 20 amp arrangement used by the Collocator for one month, the Collocator would be charged a

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extent that SBC-T has made changes unilaterally to effectuate this change in interpretation of the power rates, Complainants contest the modifications made therein.

<sup>19</sup> SBC-T's Motion for Clarification filed in Docket No. 21333 is nothing more than an attempt to relitigate the issue of power charges – an issue that at no time did the Arbitrators or the Commission adopt or accept SBC-T's position.

<sup>20</sup> The Commission approved SBC-T's Compliance Tariff Filing that included SBC-T's Physical Collocation Tariff on February 19, 2002, with an effective date of October 28, 2001. *See* Docket No. 21333, Notice of Compliance Filing and Setting of Effective Date (issued Feb. 19, 2002).

nonrecurring rate of \$7.36<sup>21</sup> per amp, or \$147.20. In sharp contrast, SBC-T's new and unilateral interpretation is that as of July 1, 2002,<sup>22</sup> it can charge for 40 amps of power - for both the 20 amp power arrangement PLUS 20 amps of redundant power -- thus resulting in doubling the monthly power consumption charge to \$294.40 per month. While the number in isolation does not seem objectionable, it is objectionable because the result of the SBC-T's new interpretation basically doubles Complainants' power consumption costs, the single most expensive component for collocation arrangements. SBC-T's true-up retroactively imposed this latest interpretation resulting in a significant imposition of excessive and unlawful charges and associated late payment charges; dollars that SBC-T is not authorized to charge for or to recoup.

SBC-T's unilateral and new interpretation is not supported by: (1) the Physical Collocation Tariff; (2) the Commission's decisions in Docket No. 21333, which established the permanent rates; or (3) the actual provisioning of the power to Complainants.

1. *The Tariff.* Sections 20.5 and 21.5 were approved by the Commission in Docket No. 21333, and have been on file since September 28, 2001, with an effective date of October 28, 2001. As quoted above, the DC Power Consumption charge "consists of the use of the DC power plant system, with AC input and AC backup. The DC Power charge is on a per amp basis." The rates for this charge, found in Section 21.5, are on a per amp basis. At the time the rate element and rates were approved, SBC-T charged or interpreted the provisions to charge only for the power amperage for the collocation arrangement, and did not seek to charge for the power amperage arrangement

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<sup>21</sup> See Physical Collocation Tariff, § 21.5 (Att. 3).

<sup>22</sup> Although asked on numerous occasions, Complainants do not know how or why SBC-T chose the date of July 1, 2001 as the effective date of its new interpretation.

PLUS redundant power. It was only in the true-up going back to July 1, 2002 (or even before that date), that SBC-T unilaterally and unlawfully determined that the Tariff provisions, which had not been changed in any respect since approval in Docket No. 21333, now enabled SBC-T to double the power charge to include a charge for redundant power. There is nothing in the Tariff that supports SBC-T's unilateral interpretation and there has been no change in the Tariff that would support SBC-T's interpretation as of July 1, 2002.

2. *Docket No. 21333.* The Commission's decision in Docket No. 21333, as well as the development of the rate element defining DC Power, do not support SBC-T's latest interpretation and attempt to double the power charges. The issue of whether the DC Power costs should or did assume provision of redundant power was addressed both in the hearing on the merits in Docket No. 21333, and also in the subsequent post-Award workshops afforded the parties to implement the Award. While it is true that the rate element definition in Section 20.5 changed, the modification of the language agreed to by all parties did not affect the method by which the per amp rate was calculated nor change the power to which the rate should be applied.

In Docket No. 21333, SBC-T raised the issue that it should be allowed to charge for both the power arrangement and redundant power on several occasions, but at no time did the Arbitrators or the Commission accept SBC-T's argument. *First*, during the hearing on the merits, Mr. Steve Turner, the subject matter expert on the Collocation Cost Model used by the Commission to establish permanent rates refuted SBC-T's interpretation of how DC Power was delivered and how it was costed in the Collocation

Cost Model.<sup>23</sup> The Award issued on March 2, 2000, resulted in what appeared to be a recognition that redundant power would be provided consistent with AT&T/WCOM's Collocation Cost Model,<sup>24</sup> and as a result the per amp rate included costs associated with redundant power.

*Second*, in subsequent workshops in which the parties were allowed to seek clarification of the Award to allow Mr. Turner to implement the Arbitrators' decisions, SBC-T again raised its theory that basically a Collocator should be charged twice as much to include provision of redundant power. But again, the Arbitrators clarified<sup>25</sup> and then reclarified<sup>26</sup> that the DC Power costs included consideration of four cables, rather than two. The implications of the clarifications ensured that the Collocator would pay the rate charged for power that included redundant power.

*Third*, at the May 2, 2001 workshop in which the Arbitrators and parties worked on tariff modifications to implement the Award, the issue was discussed at length again.<sup>27</sup> Again, neither the Arbitrators nor the other parties agreed with SBC-T's position. Instead, the record reflects that the ultimate revision to Section 20.5 rate element definition came only after an extensive discussion in which AT&T/WCOM stated and reiterated their interpretation of the manner that the DC Power rates were calculated, and

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<sup>23</sup> Docket No. 21333, Hearing on the Merits Transcript at 343-50 (Sept. 27, 2000) (attached to this Complaint as Attachment 4).

<sup>24</sup> Docket No. 21333, Arbitration Award, Attachment A, Item Nos. 12 and 13 (attached to this Complaint as Attachment 5).

<sup>25</sup> Docket No. 21333, Workshop Transcript at 59-60 (Mar. 6, 2001) (attached to this Complaint as Attachment 6 is a copy of pages 40-62 to provide the Arbitrators with the full context of the discussion.)

<sup>26</sup> Docket No. 21333, Workshop Transcript at 32-37 (Mar. 21, 2001). Specifically, Judge Srinivasa stated, "... arbitrators had to go back and rethink about -- instead of sizing it for two 100 amps, it was two 50 amps. Cable size was also resized to handle 50 amperes, and then we came up with the rates for two 50-ampere cables. That means that there are four cables that carry 50 amps, and that what the rate is. ...". *Id.* at 32-33 (attached to this Complaint as Attachment 7).

<sup>27</sup> Docket No. 21333, Workshop Transcript at 110-21 (May 2, 2001) (attached to this Complaint as Attachment 8).

based on the Arbitrators' further clarification of the issue, agreed to modify the rate element definition. But again, there were no revisions to the per amp rates or the rate components to which the rate would apply.

*Fourth*, SBC-T raised the issue that the Arbitration Award “grossly” understated the power costs and requested reconsideration of the calculations.<sup>28</sup> The Commission explicitly rejected SBC-T’s request.<sup>29</sup> Accordingly, there is no Commission decision that supports SBC-T’s newest interpretation of the Tariff, either with respect to the definition of the DC Power Consumption Rate Element or the calculation of the rates found in the Tariff.

3. *Provision of Power.* In addition, from an engineering and operational perspective, Complainants submit that the manner in which power was costed in the Collocation Cost Model and described at length in the hearing and workshops is consistent with the manner in which SBC-T provides power for collocation. In the example used above, where a Collocator orders 20 amps of power for its collocation arrangement, the Collocator’s equipment is engineered for and the power delivered is actually for 20 amps, not 40 amps (which is what SBC-T’s interpretation would result in). Generally, the type of equipment that Collocators have today in their collocation arrangements uses power using either the A or B feed, but not both. If the A feed power is interrupted, only then is the B feed power used. Therefore, it would be completely

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<sup>28</sup> SBC-T’s Comments to the Revised Arbitration Award, Att. A, Items 12 and 13 (May 7, 2001). (attached to this Complaint as Attachment 9) In fact, Complainants submit that what is really driving this issue is that SBC-T is dissatisfied with the Commission’s per amp rate for power. SBC-T apparently sees the issue of charging for redundant power as an opportunity to double the approved tariffed rate, rather than recognize that it lost on this issue before the Commission in Docket No. 21333.

<sup>29</sup> See Docket No. 21333, Memorandum from Nara Srinivasa and Donna Nelson, *et al.* to Chairman Pat Wood, III and Commissioner Brett Perlman at 21-22 (May 11, 2001); and Order Approving Revised Arbitration Award (June 4, 2001)(attached to this Complaint as Attachments 10 and 11, respectively).

inappropriate to charge the Collocator for 40 amps of power when, in fact, it only uses up to 20 amps, based on the engineering configuration of its equipment.

For all of these reasons, SBC-T's unilateral interpretation to double Complainants' power rates is unlawful, unconscionable, and improper. There simply is no basis for SBC-T's newest interpretation.

## **V. Relief Requested**

SBC-T's attempts to unilaterally and unlawfully impose a new interpretation of tariff provisions that have been approved effective October 28, 2001, that basically doubles retroactively the single most expensive costs of collocation, must be stopped immediately by this Commission. This Complaint is not an attempt to relitigate the power issue that the Commission has already decided in Docket No. 21333. However, Complainants anticipate that SBC-T will attempt to do so in the context of this proceeding, as it is attempting to do in its Motion for Clarification filed in Docket No. 21333. Therefore, Complainants respectfully request that the Arbitrators limit the scope of this Complaint to the issues as set forth in the Decision Point List to ensure that neither the Commission nor the parties have to relitigate the issue of the DC Power per amp rate in the Tariff. This Complaint is straightforward and is limited to an interpretation of the Tariff.

With this in mind, Complainants respectfully request that the Commission, pursuant to the provisions of P.U.C. Proc. R. § 22.326:

1. docket this Complaint and handle the complaint under the time guidelines provided in P.U.C. Proc. R. § 22.326;
2. establish a procedural schedule, including a hearing on the merits;



3. issue an order that prohibits SBC-T from charging the rates contained in Section 21.5 of the Physical Collocation Tariff on redundant power;
4. order SBC-T to modify its Collocation Handbook and/or Collocation Applications consistent with the ultimate decision on the merits;
5. find that SBC-T unlawfully charged rates in excess of tariffed rates in violation of § 53.004(a) of PURA; and
6. grant any further relief to which Birch and AT&T show themselves to be justly entitled.

Respectfully submitted,

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### **CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document was served on the counsel of record via hand-delivery, first-class mail, email or telecopier to all parties of record on this 26th day of March, 2003.

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